

SEP 21 1982

1015-B

Y4. Ed 8/1: P36

**ADMINISTRATION'S PROPOSED REGULATIONS FOR
PELL GRANT FAMILY CONTRIBUTION SCHEDULE**

**ORIGINAL
COMPLETED**

**HEARING
BEFORE THE
SUBCOMMITTEE ON
POSTSECONDARY EDUCATION
OF THE
COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES
NINETY-SEVENTH CONGRESS
FIRST SESSION**

**HEARING HELD IN WASHINGTON, D.C. ON
MARCH 23, 1981**

Printed for the use of the Committee on Education and Labor



Y4. Ed 8/1: P36

**U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1982**

96-493 O

ORIGINAL

COMMITTEE ON EDUCATION AND LABOR

CARL D. PERKINS, Kentucky, *Chairman*

AUGUSTUS F. HAWKINS, California
WILLIAM D. FORD, Michigan
PHILLIP BURTON, California
JOSEPH M. GAYDOS, Pennsylvania
WILLIAM (BILL) CLAY, Missouri
MARIO BIAGGI, New York
IKE ANDREWS, North Carolina
PAUL SIMON, Illinois
GEORGE MILLER, California
AUSTIN J. MURPHY, Pennsylvania
TED WEISS, New York
BALASAR CORRADA, Puerto Rico
DALE E. KILDEE, Michigan
PETER A. PEYSER, New York
PAT WILLIAMS, Montana
WILLIAM R. RATCHFORD, Connecticut
RAY KOGOVSEK, Colorado
HAROLD WASHINGTON, Illinois
DENNIS E. ECKART, Ohio

JOHN M. ASHBROOK, Ohio
JOHN N. ERLBORN, Illinois
JAMES M. JEFFORDS, Vermont
WILLIAM F. GOODLING, Pennsylvania
E. THOMAS COLEMAN, Missouri
KEN KRAMER, Colorado
ARLEN ERDAHL, Minnesota
THOMAS E. PETRI, Wisconsin
MILICENT FENWICK, New Jersey
MARGE ROUKEMA, New Jersey
EUGENE JOHNSTON, North Carolina
LAWRENCE J. DeNARDIS, Connecticut
LARRY E. CRAIG, Idaho
WENDELL BAILEY, Missouri

SUBCOMMITTEE ON POSTSECONDARY EDUCATION

PAUL SIMON, Illinois, *Chairman*

WILLIAM D. FORD, Michigan
PETER A. PEYSER, New York
JOSEPH M. GAYDOS, Pennsylvania
TED WEISS, New York
IKE ANDREWS, North Carolina
DENNIS E. ECKART, Ohio
CARL D. PERKINS, Kentucky
(*Ex Officio*)

E. THOMAS COLEMAN, Missouri
JOHN N. ERLBORN, Illinois
ARLEN ERDAHL, Minnesota
(*Ex Officio*)
LAWRENCE J. DeNARDIS, Connecticut
WENDELL BAILEY, Missouri

CONTENTS

Hearing held in Washington, D.C., on March 23, 1981.....	Page 1
Statement of—	
Bell, Hon. Terrel H., Secretary, Department of Education, accompanied by William Dingeldein, Acting Deputy Assistant Secretary, Planning and Budget; Sally Christensen, Acting Assistant Secretary, Planning and Budget; James Moore, Acting Deputy Assistant Secretary, Student Financial Assistance; Al Alford, Acting Assistant Secretary for Legisla- tion; and Theodore Sky, Acting General Counsel	13
Martin, Dallas, executive director, National Association of Student Finan- cial Aid Administrators.....	35
Saunders, Charles, director, governmental relations, American Council on Education	32
Prepared statements, letters, supplemental materials, et cetera—	
Bell, Hon. Terrel H., Secretary, Department of Education:	
Letter from Chairman Paul Simon, Subcommittee on Postsecondary Education and Chairman Carl D. Perkins, Committee on Education and Labor, dated March 18, 1981.....	3
Letter to Chairman Simon, dated March 23, 1981, with several enco- sures	5
Telegram from Rev. Williams McInnes, S.J., president, Association of Jesuit Colleges and Universities, et al., dated March 19, 1981	4

ADMINISTRATION'S PROPOSED REGULATIONS FOR PELL GRANT FAMILY CONTRIBUTION SCHEDULE

MONDAY, MARCH 23, 1981

HOUSE OF REPRESENTATIVES,
COMMITTEE ON EDUCATION AND LABOR,
SUBCOMMITTEE ON POSTSECONDARY EDUCATION,
Washington, D.C.

The subcommittee met, pursuant to call, at 10 a.m., in room 2175, Rayburn House Office Building, Hon. Paul Simon (chairman of the subcommittee) presiding.

Members present: Representatives Simon, Peyser, Weiss, Coleman, Erlenborn, and Erdahl.

Staff present: William A. Blakey, majority counsel; Nancy M. Al-Arif, clerk; John Jennings, counsel; John Dean, minority legislative associate; and Betsy Brand, legislative assistant.

Mr. SIMON. The subcommittee hearing will come to order.

The Subcommittee on Postsecondary Education today holds a hearing on the administration's family contribution schedule which was published in the Federal Register on March 13, 1981.

The family contribution schedule for the Pell grant—formerly BEOG—is the regulation which sets forth the formulas used to determine student eligibility for Pell grants on the basis of financial need.

On January 19, 1981, the Department of Education published a family contribution schedule which contained a practice begun during the 1973-74 school year of indexing by the [CPI] the calculation of family size offsets.

These offsets determine how much money parents have as disposable income to pay for college costs—thereby determining the size of a student's grant.

As a result of the President's suspension of all regulations on January 21, 1981, the Department stopped processing all student applications for Pell grants and revised the final regulations which were signed by the Secretary on March 9, 1981, but not published until March 13, 1981.

The revised regulation would freeze the family size offset at its 1980-81 level, rather than increasing the offset by the Consumer Price Index [CPI] as is customarily done.

The reason given for the change is to reemphasize "the traditional responsibility of the family in financing postsecondary education" and to "combat inflation."

It was noted that one commenter on the FCS notice of proposed rulemaking, dated August 1, 1980, "suggested that the use of the Consumer Price Index artificially increased financial need."

It appears that the Department is using this comment as a partial rationale for not indexing the offsets.

Upon close examination of this comment, it becomes evident that the commenter, Robert Walling, director for financial aid, Central Michigan University, did not request that the offset not be indexed, but that the CPI may not be the best index to use.

He was concerned that the CPI includes current mortgage interest rates which do not necessarily apply to parents of college-age students.

He urges the Department to reevaluate the use of the CPI as the index or to extract the mortgage interest rate component from the CPI.

As most of you know, I have been a staunch opponent of indexing as a general rule. I believe that Mr. Walling makes a valid point. However, now is not the time to consider policy changes which will further delay processing or deny access to the Pell grant program to students who expect to participate.

I might add here that I have for some time been a critic of the way the CPI is computed, and I think that that particular criticism has some validity.

We are, along with Australia, one of the only nations on the face of the Earth that computes housing on the assumption that everybody buys a new house every month which is hardly a valid way to measure the index, so that there is an inflationary factor that is added to the CPI.

If the family size offset for the 1981-82 is not indexed, and there are some conflicts in some of these figures here now, the Congressional Budget Office [CBO] estimates 154,000 students would lose eligibility in 1981-82 and \$220 million would be saved.

An alternative method of achieving savings under the Pell grant program is by applying the first stage of the grant reduction schedule.

If this reduction schedule is used, CBO estimates that \$179 million would be saved with no loss of eligibility.

The administration has slightly lower estimates of \$185 million savings with a 100,000 loss in eligibility if the offset is not indexed.

It also estimates that the reduction schedule would save \$172 million.

You may wish to comment about that.

Because of my strong personal concern about the Department's failure to process Pell grant applications over the last 60 days, Chairman Perkins and I wrote Secretary Bell on March 18 questioning both the legality and the propriety of the suspension of the January 19 regulation.

The subcommittee will hear from the Department today regarding its regulatory proposal and the consequences of its delay in processing the pending and outstanding applications for assistance.

We have a number of questions that I am sure will be directed to you.

Let me just add that the Secretary and I have met to try and see if some kind of compromise can't be negotiated, and I appreciate

the attitude that the Secretary and his staff have shown in these negotiations.

We have been in touch by phone over the weekend, trying to get something worked out.

Up to this point, nothing has been worked out.

I would like at this point in the record to insert the letter which Chairman Perkins and I sent, and also the response which I have heard from the Secretary, to that letter that was sent, and also a copy of a telegram, sent from the higher education community on this question.

[The letters and information referred to follow:]

HOUSE OF REPRESENTATIVES,
Washington, D.C., March 18, 1981.

HON. TERREL H. BELL,
Secretary, Department of Education,
Washington, D.C.

DEAR MR. SECRETARY: The Committee on Education and Labor recently received the Department's March 13, 1981 Final Regulation governing the Pell Grant Program—the 1981-82 Family Contribution Schedules. By action of the President on January 21, 1981, the Carter Administration's January 19, 1981 Final Regulation establishing a different Family Contribution Schedule was "suspended." Since that time the Department has not processed Pell Grant applications from hundreds of thousands of students, thereby delaying the college plans of many incoming first year students and those students currently enrolled. The effect of this delay on many students at proprietary schools is potentially more disastrous, since these schools offer mostly one-year programs and are continuously enrolling new students. Summer students at colleges and universities will also be adversely affected.

The Committee wants you to know that we believe serious questions exist with respect to the legality and propriety of the Department's actions to date with regard to the Pell Grant regulations. Specifically, the Department of Education has always maintained that a Final Regulation was "final", at least as far as the Department was concerned, when it was published in the Federal Register. This finality should be subject only to the 45 day layover period provided for in the General Education Provisions Act (GEPA). What is the statutory authority for your unilateral suspension of a Final Regulation? Or the statutory authority for not following the GEPA provisions?

The March 13, 1981 Final Regulation waives the GEPA requirement for publication of a 'proposed rule', citing the authority in the Title V, USC incorporated in Section 431(b) of GEPA.

The Department failed, however, to follow the Section 431(b)(2)(B) requirement to notify this Committee (and the Senate Labor and Human Resources Committee) of the circumstances which will cause "extreme hardship for intended beneficiaries" which necessitated the waiver of the Title V USC requirement for publication of a proposed rule. Why did you fail to follow the statute which permits both Committee Chairmen to evaluate whether or not an "emergency" exists? Pursuant to what authority have you unilaterally waived both proposed rulemaking and notice to the proper Committees? What is the "emergency"?

The Regulatory Flexibility Act (Public Law 96-354) requires that a Regulatory Impact Statement be included in all regulations published after January 1, 1981. The March 13, 1981 regulation fails to follow the Regulatory Flexibility Act and does not even mention its requirements. The law provides for no exceptions or waiver by the Executive Branch. In addition, the Legislative history (see 126 Cong. Rec. S 10935, August 6, 1980), is clear that the law applies to this program. Pursuant to what authority did you ignore the requirements of the Regulatory Impact Statement?

In addition, the Family Contribution Schedule you signed on March 9, 1981, indicates that proposed amendments (implementing President Reagan's changes in Federal Student Aid programs) "have already been submitted to Congress." This was not true on March 9th and it is not true today. The Congress has not yet received your legislative proposals.

Mr. Secretary, the Members of this Committee will not tolerate a "freeze" of student aid funds that were lawfully appropriated for the use of low and middle income students who want to pursue a postsecondary education. We also do not intend to

permit the Department to ignore the law in carrying out its administrative responsibilities with regard to student aid programs. To obtain answers to questions stated above related to the Family Contribution Schedule, the Subcommittee on Postsecondary Education will hold a hearing on March 23, 1981, at 10:00 a.m. in Room 2175 Rayburn House Office Building. You and your colleagues: William Dingeldein, Acting Deputy Assistant Secretary for Program Planning and Budget Analysis, Sally Christensen, Acting Deputy Assistant Secretary for Budget Systems and Services, and James W. Moore, Acting Deputy Assistant Secretary for Student Financial Assistance, Office of Postsecondary Education, are requested to appear.

We would remind you that Congress provided in the Education Amendments of 1980 (Public Law 96-374), a statutory, ratable reduction schedule which is to be used in the event of less than full funding of the Pell Grant program. Use of that schedule would make the Department's regulation unnecessary. We urge you to consider withdrawing the March 13, 1981 Family Contribution Schedule and removing the uncertainty hanging over the heads of hundreds of thousands of students.

Sincerely,

CARL D. PERKINS,
Chairman, Committee on Education and Labor.

PAUL SIMON,
Chairman, Subcommittee on Postsecondary Education.

[Telegram]

WASHINGTON, D.C., MARCH 19, 1981.

HON. TERREL H. BELL,
Secretary of Education, Department of Education, Office of the Secretary, Washington, D.C.

DEAR MR. SECRETARY: We strongly urge you to resume processing Pell grants to avoid massive disruption of the student aid system at the peak of applications for the 1981-82 academic year. We question the legality of withdrawing the schedule which has been reviewed by Congress and published as final. This action will result in critical delays in institutional award notices to some 5 million needy students, who may be unable to determine whether they can attend college until late summer or fall. Discussion of means to reduce program costs can continue without delaying the delivery of aid. We understand that it will cost the Department over \$600,000 to notify Pell grant applicants of the delay pending congressional consideration of the administration's proposed changes in the schedule, and that implementation of the changes would impose further delays as colleges and the Department modify their processing systems.

Sincerely,

Rev. William McInnes, S.J., President, Association of Jesuit Colleges and Universities; Rev. Donald MacLean, S.J., President, St. Joseph's University; Gary H. Quehl, President, Council for the Advancement of Small Colleges; Francis J. Herins, President, Carroll College; Samuel L. Myers, Executive Director, National Association for Equal Opportunity in Higher Education; Charles A. Lyons, Jr., Chancellor, Fayetteville State University; John Phillips, President, National Association of Independent Colleges and Universities; Melvin A. Eggers, Chancellor-President, Syracuse University; Durwood Flemming, President, Southwestern University, Texas; James Barrett, Executive Secretary, Division of Higher Education, United Methodist Church; Robert L. Clodius, Executive Director, National Association of State Universities and Land-Grant Colleges; Harold L. Enarson, President, Ohio State University; Roger Yarrington, Vice President, American Association of Community and Junior Colleges; William L. Ramsey, District Director, Milwaukee Area Technical College; John Kamerick, President, University of Northern Iowa; J. W. Peltason, President, American Council on Education; E. K. Fretwell, Jr., Chancellor, University of North Carolina at Charlotte; Mark H. Curtis, President, Association of American Colleges; Samuel R. Spencer, Jr., President Davidson College; Thomas A. Bartlett, President, Association of American Universities; Terry Sanford, President, Duke University; Sister Alice Gallin, O.S.U., Executive Director, Association of Catholic Colleges and Universities; Rev. Msgr. Frederick R. McManus, Vice Provost and Dean of Graduate Studies, Catholic University of America; and Allan W. Ostar, President, American Association of State Colleges and Universities.



THE SECRETARY
WASHINGTON, D.C. 20202

March 23, 1981

The Honorable Paul Simon
Chairman, Subcommittee
on Postsecondary Education
House of Representatives
Washington, D.C. 20515

Dear Mr. Simon:

This is in response to your letter of March 18 concerning the procedure by which the recent revisions to the 1981-82 Family Contribution Schedules for the Pell Grant Program were made (46 F.R. 16823, March 13, 1981). We are confident that we met all the statutory requirements applicable to the promulgation of these regulations.

You first inquire as to our authority for having postponed the effective date of the Family Contribution Schedules published January 19, 1981 (46 F.R. 5320) until March 30, 1981. This postponement in the effective date, accomplished by notice in the Federal Register (46 F.R. 12495, February 17, 1981), was based on President's Reagan's memorandum of January 29, 1981 to heads of Executive agencies concerning "Postponement of Pending Regulations." That memorandum directed us to publish a notice in the Federal Register postponing until March 30 the effective date of all regulations that had been promulgated in final form and were scheduled to become effective during the period from January 29 through March 30.

You next ask why, in connection with our waiver of notice of proposed rule-making for the revisions to the Family Contribution Schedules published March 13, 1981, we did not first follow the procedure, set forth in section 431(b)(2)(B) of the General Education Provisions Act, of providing notice to the Committee on Education and Labor of the House of Representatives and the Committee on Human Resources of the Senate. Section 431(b)(2)(A) of the General Education Provisions Act requires us to invite public comment on regulations in accordance with section 553 of Title 5 of the United States Code. That section of the Administrative Procedure Act states that notice of proposed rulemaking is not required

when the agency for good cause finds...that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

Best Available Copy

Page 2 - The Honorable Paul Simon

The Department and its predecessor agency, the Office of Education, have invoked the exceptions under 5 U.S.C. section 553, quoted above, many times since 1974 when section 431(b)(2)(B) was added to the General Education Provisions Act without advance notice under that section. The Congress has had knowledge of this because it has received copies of all final regulations pursuant to section 431(d) of the General Education Provisions Act. The Congress has never objected to the Department's consistent interpretation of section 431(b) of the General Education Provisions Act in this manner.

We do not think that the section 431(b)(2)(B) notice procedure applies to a decision by the Department to invoke the exceptions to public rulemaking under 5 U.S.C. section 553. As indicated above, section 431(b)(2)(A) of the General Education Provisions Act authorizes us to use section 553 procedures. The factors mentioned in section 553 for waiving public rulemaking (impracticable, unnecessary, contrary to the public interest) are different from the factors mentioned in section 431(b)(2)(B), namely, undue delay and extreme hardship to beneficiaries.

On its face, the notice provision of section 431(b)(2)(B) applies only to the requirement in section 431(b)(1), that the effective date of a regulation be delayed for thirty days after publication in the Federal Register. In the case of the March 13 revision of the Student Family Contribution Schedules, the Department did not seek to waive the delayed effective date requirement and therefore did not provide notice under 431(b)(2)(B) since the regulation was subject to the provisions of section 431(d) of the General Education Provisions Act which provides for a delayed effective date of at least 45 days.

The Regulatory Flexibility Act, to which you have also directed our attention, is not applicable to these regulations. Section 4 of that Act states that the Act applies only to rules for which a notice of proposed rulemaking is issued on or after January 1, 1981. The notice of proposed rulemaking from which the Family Contribution Schedules derive was published on August 1, 1980 (45 F.R. 51243). The waiver of notice of proposed rulemaking for the March 13 revisions to the Family Contribution Schedules provides an alternative source of support for the view that the Regulatory Flexibility Act is inapplicable to those revisions. That is, under sections 601(2), 603(a), and 604(a) of Title 5 of the United States Code, as amended by section 3 of the Regulatory Flexibility Act, a regulatory flexibility analysis is required only in those cases where an agency is required by section 553 of Title 5 of the United States Code to publish a notice of proposed rulemaking. In this instance, under the language of section 553 no such notice was required because the conditions for a waiver were met.

You also remind us that Congress provided a statutory reduction procedure for use in the event of less than full funding of the Pell Grant Program.

Page 3 - The Honorable Paul Simon

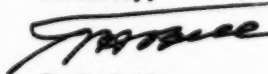
We considered this approach and rejected it for three reasons:

1. The magnitude of the overall savings to be achieved--\$636 million in FY 1981--would require significant reductions in awards to the truly needy. I am enclosing a comparative analysis of the equity implications of the Administration's reform proposal and the statutory reduction formula in achieving such savings. As the analysis indicates, the equity considerations under statutory reduction change depending upon the amount to be saved.
2. We believe it important to deal directly with the causes of the program's growing costs--namely, the removal in the 1980 amendments of limitations on educational costs used in determining awards, the inclusion in the same amendments of a State and local income tax offset in determining the family's contribution toward educational costs, and the indexing of family living expenses to changes in the Consumer Price Index.
3. We believe that it is also important to reassert certain principles in the determination of Federal student assistance--namely, the parent's and student's roles in helping to finance educational costs. These concerns gave rise to our proposals to increase the proportion of a family's discretionary income going toward educational costs and to our proposal for self-help.

Our proposed change in the Family Contribution Schedule not only permitted us to restrain the growing costs of the program which resulted from indexing, but it was also consistent with our other objectives of protecting the truly needy and of requiring a greater contribution by families toward educational costs. We were aware that the proposed Family Contribution Schedule change would cause a temporary delay in the processing of student grant applications. For this reason, we acted promptly to submit the proposed change to the Congress and asked for your assistance, when I testified before your subcommittee on March 11, in expediting congressional consideration.

I know we both want to avoid unnecessary disruption in the plans of students, families, and educational institutions. I hope the above reasons explain why we have acted as we have and that we can now move toward a prompt resolution of the issues before us.

Sincerely,



T. H. Bell

Enclosure

Comparative Analysis of the Equity Implications
of the Reagan Reform Proposal and Statutory Reduction
Provisions in Constraining Pell Grant Cost Increases in FY 1981

Problem

If action is not taken to constrain costs of the Pell Grant program in FY 1981, the Administration estimates that a supplemental appropriation of \$1.297 billion will be necessary to cover FY 1981 Pell Grant costs. This is \$636 million more than the supplemental request now pending before the Congress and \$783 million above program costs for fiscal year 1980. (The Reagan Reform proposal provides an increase of \$147 million over fiscal year 1980.)

There are several reasons for these incremental costs. The principal source of the cost increases relate to changes in the determination of allowable education costs established in the Education Amendments of 1980. These amendments mandated that several components of educational cost, not previously allowed in the Basic Grants program, be considered in determining student "need" and provided substantial institutional latitude in setting the dollar amounts. These changes alone account for \$374 million of the \$636 million in additional costs. A number of other factors account for the remaining difference. These are (1) increases associated with the phasing out of social security dependent benefits (\$41 million), (2) institutional administrative allowances (\$28 million); (3) updating of various inflation factors (\$85 million); and (4) additional costs relating to increased applicants made eligible under the Middle Income Student Assistance Act (\$108 million).

Constraining Costs under the Reagan Budget Proposal

The Reagan budget proposes to contain the size of the FY 1981 supplemental appropriation and the increase over fiscal year 1980 by instituting four major changes designed to protect the awards of truly needy students—defined as students from families whose discretionary income is zero or less. This would include families of four with one student in postsecondary education and both parents working up to an adjusted gross income of between \$11,000 and \$12,000. The four changes are (1) to defer indexing of the family-size offset (savings of \$134 million); (2) to control allowable education costs through a series of legislative and regulatory changes (savings of \$374 million); (3) to require a \$750 self-help component of all students (savings of \$100 million); and to eliminate the newly mandated institutional administrative allowance of \$10 for each Pell Grant recipient (savings of \$28 million).

These changes will affect the awards of students as follows:

- o Deferring indexing will lower the awards by about \$120 of those students whose families have discretionary income to contribute toward educational costs. Students from higher-income families will have their awards reduced proportionately more than students from lower-income families. No student from a family with zero discretionary income—the truly needy—will be affected.
- o The \$750 self-help requirement will lower only the awards of students from families with positive discretionary income attending low-cost institutions (\$2,500 or less).

Best Available Copy

- o The limitations on allowable educational costs will prevent large, discontinuous increases in awards from occurring but will not prevent normal year-to-year adjustments from occurring. Thus, the award of no student will be reduced and the awards of low-income students attending low-cost schools will be allowed the usual increases associated with the half-cost rule; that is, the Federal government will pay for 50 percent of the normal increase in allowable educational costs such as increases in tuition and fees.

Attached are several examples of the effects of these changes in FY 1982.

Constraining Costs Under the Statutory Provisions

The statute provides a two-part procedure for reducing awards under conditions of less than full funding. The first part of this procedure, "scheduled reduction," provides a series of percentage reductions from 10 to 50 percent, depending upon calculated expected family contributions, which bear more heavily on higher income families. Scheduled reduction completely protects the awards of students from families with expected contributions of \$600 or less--the lowest income families. However, it reduces awards of the affected students in a series of abrupt, discontinuous steps and within each step the reductions vary inversely with income. Scheduled reduction alone will produce savings of \$150 million.

When the reduction from full funding exceeds \$150 million, "rateable reduction," the second part of the reduction procedure, is applied. Rateable reduction has been interpreted to mean a flat percentage reduction of all awards with the specific percentage dependent upon the overall magnitude of the aggregate reduction. In FY 1981 to reduce the budget down to the Reagan request of \$2.562 billion would require a percentage reduction from 16 to 22.6 percent of all awards remaining after scheduled reduction had been applied (the percentage reduction depending upon whether the maximum award is set at \$1,750 or at the authorized level of \$1,900). Assuming the full funding maximum grant of \$1900 in FY 1981 a truly needy student, one with zero discretionary income, attending a school of \$3,800 or more would have his/her award reduced by \$430 from \$1,900 to \$1,470. Assuming that a maximum grant of \$1,750 is set in appropriation language, this same student would have his/her award reduced by \$280, from \$1,750 to \$1,470. The reduction in the awards of higher income students (those receiving smaller awards) would be less in absolute dollar amounts. Thus, when reduction from full funding requires a sizeable flat percentage reduction in the awards of all students, the effect on truly needy students is substantial. To the extent that the savings to be achieved are less, the effect on truly needy students would be reduced.

Best Available Copy

Effects of Pell Grant Proposals on Students at
Various Income Levels and Various Cost Schools
in FY 1982

The attached examples compare Pell Grant awards under the Carter and Reagan budgets in FY 1982 taking into account the Reagan budget reforms. The proposals that affect expected family contribution show up as changes in the family size offset, the State and local tax offset, and the "tax rate" on discretionary income. The \$750 self-help proposal influences the size of the award after expected family contribution is determined. Expected family contribution is calculated on the basis of the following assumptions.

- * Family size of four
- * Two parents in household, both employed
- * One dependent in postsecondary education
- * No contribution from assets
- * No unusual expenses
- * No elementary/secondary tuition offset

Under the Carter budget, the Pell grant equals the lesser of half-cost, maximum grant minus expected family contribution and cost minus expected family contribution. Under the Reagan budget, the Pell grant equals the lesser of half-cost, maximum grant minus expected family contribution, and cost minus the sum of \$750 and expected family contribution. In FY 1982, the maximum grant is \$1800 in both the Carter and Reagan budgets.

While self-help is not required in the Carter budget, most students would still have some financial burden left after the Pell grant and expected family contribution have been taken into account. This amount has been labelled "remaining need" in both the Carter and Reagan calculations. In cases where "remaining need" is large, other grant aid will be available to cover up to all but \$750 under the Reagan proposals and that could be financed by means of work (including CWS) or loans (including GSL or NDSL) or other sources of student and family financing.

Best Available Copy

Family Income
= \$12,000

	<u>Carter Budget</u>	<u>Reagan Budget</u>
Adjusted Gross Income	\$ 12,000	\$ 12,000
(minus) Family Size Offset	- 9,500	- 8,650
	2,500	3,350
(minus) Employment Offset	- 1,500	- 1,500
	1,000	1,850
(minus) Federal Income Taxes	- 872	- 872
	128	978
(minus) State and Local Taxes	- 174	- 0
Discretionary Income	46	978
(times) "tax rate"	x .14	x .20
Expected Family Contribution	0	195

Pell Grant Remaining need Pell Grant Remaining need

Pell Grant at Schools
Costing:

\$2,000	=	\$ 1,000	\$ 1,000	\$ 1,000	\$ 805
2,400	=	1,200	1,200	1,200	1,005
3,600	=	1,800	1,800	1,605	1,800
6,000	=	1,800	4,200	1,605	4,200

Family Income
= \$16,000

	<u>Carter Budget</u>	<u>Reagan Budget</u>
Adjusted Gross Income	\$16,000	\$16,000
(minus) Family Size Offset	- 9,500	- 8,650
	6,500	7,350
(minus) Employment Offset	- 1,500	- 1,500
	5,000	5,850
(minus) Federal Income Taxes	- 1,764	- 1,764
	4,236	4,086
(minus) State and Local Taxes	- 353	- 0
Discretionary Income	3,883	4,086
(times) "tax rate"	x .14	x .20
Expected Family Contribution	544	817

Pell Grant Remaining need Pell Grant Remaining need

Pell Grant at Schools
Costing:

\$2,000	=	\$1,000	\$ 456	\$ 433	\$ 750
2,400	=	1,200	656	833	750
3,600	=	1,256	1,800	983	1,800
6,000	=	1,256	4,200	983	4,200

Best Available Copy

Family Income
= \$20,000

	<u>Carter Budget</u>	<u>Reagan Budget</u>
Adjusted Gross Income	\$20,000	\$20,000
(minus) Family Size Offset	- 9,500	- 8,650
	<u>10,500</u>	<u>11,350</u>
(minus) Employment Offset	- 1,500	- 1,500
	<u>9,000</u>	<u>9,850</u>
(minus) Federal Income Taxes	- 2,802	- 2,802
	<u>6,198</u>	<u>7,048</u>
(minus) State and Local Taxes	- 560	- 0
Discretionary Income	<u>5,638</u>	<u>7,048</u>
(times) "tax rate"	x .14	x .20
Expected Family Contribution	<u>789</u>	<u>1,410</u>
	<u>Pell Grant</u>	<u>Remaining need</u>
	<u>Pell Grant</u>	<u>Remaining need</u>

Pell Grant at Schools
Costing:

\$2,000	=	\$1,000	\$ 211	\$ 0	\$ 590
2,400	=	1,011	600	240	750
3,600	=	1,011	1,800	390	1,800
6,000	=	1,011	4,200	390	4,200

Family Income
= \$26,000

	<u>Carter Budget</u>	<u>Reagan Budget</u>
Adjusted Gross Income	\$26,000	\$26,000
(minus) Family Size Offset	- 9,500	- 8,650
	<u>16,500</u>	<u>17,350</u>
(minus) Employment Offset	- 1,500	- 1,500
	<u>15,000</u>	<u>15,850</u>
(minus) Federal Income Taxes	- 4,669	- 4,669
	<u>10,331</u>	<u>11,181</u>
(minus) State and Local Taxes	- 934	- 0
Discretionary Income	<u>9,397</u>	<u>11,181</u>
(times) "tax rate"	x .14	x .20
Expected Family Contribution	<u>1,316</u>	<u>2,236</u>
	<u>Pell Grant</u>	<u>Remaining need</u>
	<u>Pell Grant</u>	<u>Remaining need</u>

Pell Grant at Schools
Costing:

\$2,000	=	\$ 484	\$ 200	\$ 0	\$ 0
2,400	=	484	600	0	264
3,600	=	484	1,800	0	1,364
6,000	=	484	4,200	0	3,764

Best Available Copy

Mr. SIMON. We are very pleased to welcome you here and we wish the circumstances might be a little different where we could announce that we have reached agreement and we could start processing these grants immediately.

I know that is your wish, too, and I hope that we can soon move in that direction. We are pleased to hear you at this point, Mr. Secretary.

STATEMENT OF HON. TERREL H. BELL, SECRETARY, DEPARTMENT OF EDUCATION, ACCOMPANIED BY WILLIAM DINGELDEIN, ACTING DEPUTY ASSISTANT SECRETARY, PLANNING AND BUDGET; SALLY CHRISTENSEN, ACTING ASSISTANT SECRETARY, PLANNING AND BUDGET; JAMES MOORE, ACTING DEPUTY ASSISTANT SECRETARY, STUDENT FINANCIAL ASSISTANCE; AL ALFORD, ACTING ASSISTANT SECRETARY FOR LEGISLATION; AND THEODORE SKY, ACTING GENERAL COUNSEL

Secretary BELL. Thank you, Mr. Chairman. I don't have a prepared statement, I do want to quote a few summary points from my letter in response to your letter to me.

With me this morning is James Moore, who is Acting Deputy Assistant Secretary over student financial aid and Sally Christensen, who is Acting Assistant Secretary for the planning and budget operation in our shop.

Bill Dingeldein, is Acting Deputy Assistant Secretary in the planning and budget program. Mr. Ted Sky is here as Acting General Counsel, and Al Alford, whom I think you know, who is Acting Assistant Secretary for Legislation.

In the letter from you, the key point is why we don't proceed with the statutory reduction procedure that is in the statute for use in the event that there is less than full funding for the Pell program. We considered that approach, Mr. Chairman.

As we state in our letter, there were three reasons why we didn't want to do that.

We think they are valid reasons. We think they are reasons that are in the best interest of the students.

The first one of these is the magnitude of the overall savings to be achieved, that we are under obligation to achieve, of \$636 million for fiscal 1981.

This would require quite significant reductions in the awards to the truly needy, and that is the reason we have the regulations and the proposed statutory changes, so we can avoid that.

We have a comparative analysis of the equity implications that we transmitted with our letter to demonstrate what this would do.

This analysis indicates the equity considerations under the statutory reduction change that is dependent upon the amount to be saved which we have indicated.

Then, second, we think it is quite important to deal directly with the causes of those growing costs, and, of course, we all know that that is the removal in 1980 of the amendments on limitations on educational costs used in determining these awards and the inclusion in the same amendments of the State and local income tax offset in determining the family's contribution toward educational

costs and the indexing of the family living expenses to changes in the Consumer Price Index.

Throughout Government, we find many expenditures tied back to the Consumer Price Index, and there is great concern about that in this administration as we strive to bring the budget and Federal expenditures under control.

Those items that are indexed just drive costs up, and so we would like very earnestly to persuade you to support us in this.

Then, third, we believe it is also important to reassert some of the principles that we emphasized to you when it was our privilege to be before you a few days ago, mainly, the parents' and the students' role in helping to finance their educational costs. These concerns, of course, gave rise to our proposals that we increase the proportion of the family's discretionary income that goes toward education costs, and to our proposal for self-help.

I would emphasize again that we have provisions in our proposals for needy students where these, their contributions, couldn't be met. The student financial aid officers would have authority to waive that, and so for those that are very needy, we think we have a provision for taking care of that.

Our proposed change in the family contribution schedule not only permitted us to restrain the growing costs of the program, which resulted from indexing, but it was also consistent with our other objectives of protecting the needy, and of requiring a modestly increased contribution by families toward these education costs.

We were aware that the proposed family contribution schedule change would cause a temporary delay in the processing of student grant applications, and for that reason, we acted promptly to submit a proposed change to the Congress. We asked for your assistance when we testified on March 11 in expediting that, and I know we both want to see the students able to plan in their institutions in this regard, and I hope the reasons that we have given explain why we have acted as we have. I hope we can also move to a prompt resolution of the issues before us.

If there is any way we can be helpful to this committee to explain our proposals further, to resolve the issues, and if the committee could act on our proposed regulation changes, if there is not an intent to disapprove them or if that intent could be signalled to us, we could then begin to process, at least the student eligibility reports could go out.

Now, the dollar amounts, as you know, Mr. Chairman, comes after that and if we have differences on the dollar amounts, like the limitation on the cost of education, or the \$750 self-help contribution that we have talked about. If we have differences there, if we could get an indication that it is not your intent to disapprove the regulations, then we would immediately contact our computer center, and I have asked them to be standing by and if there are any preliminary actions that we need to take, to take them now so we could signal them very quickly to begin the process. And so what we need to resolve, if we could, Mr. Chairman, would be that part of the proposal that is in the regulation.

If you do not intend to disapprove our regulation, then we could proceed. The dollar amounts that relate to legislation that comes after the student eligibility report, we could resolve that as Con-

gress follows their procedures. Later on in the year, as the awards came out, they could be calculated. We are very anxious to proceed, and would like to respond to any questions that you might have at this time.

Mr. SIMON. Thank you very much, Mr. Secretary.

CBO estimates that 154,000 students would lose eligibility under the regulation, and that approximately \$220 million would be saved.

I gather that your figures differ from that?

Secretary BELL. I don't believe substantially, but I believe there are some differences. Maybe Jim Moore could talk to that. I believe we have been talking of 100,000, rather than 150,000 students.

Mr. MOORE. Yes, Mr. Secretary. About 100,000 students and our estimate, Mr. Chairman, on the savings at the level of \$134 million in contrast to the CBO estimate of \$220 million.

Mr. SIMON. We are in a situation, Mr. Secretary, as I think you understand, where we feel a fundamental policy change is taking place, and it is taking place with a gun to our head, because we know we have got to get these grants processed. Since the grant already provides at a maximum 50 percent of the costs, in fact, you have a very substantial student and family requirement in there already.

I have two questions.

If this committee should approve the regulation, are we faced with the same situation next year? There will be no indexing next year and the following year and the year after that? I have a second question.

If we disapprove the regulation, what happens at that point?

Secretary BELL. If the regulation is disapproved and if no action is taken to reduce the expenditures in this program, I don't think the administration would be prepared to move ahead until it had exhausted all of its options to try to hold down expenditures.

I do not want to be saying that we would not move ahead and comply with the law.

We would move ahead as forthrightly as we could, but not at the cost of running these expenditures up where they are programed to go, if we don't do anything at the present time.

I think we should emphasize the point that the higher education budget, and I contrast it to the elementary and secondary education budget, actually provides for higher funding than last year. I would point out that this is unique to almost the entire Reagan budget, so we are conceding to higher expenditures.

It is just a question of how much we escalate these costs. We would like very much to persuade you to support us on the reductions that we are proposing in this regard.

I would also point out while I am speaking, that the Congressional Budget Office estimates that using the first tier of the ratable reduction schedule that is in the statute, that this formula would save \$179 million. We project that to be close to \$150 million.

Their estimate, the CBO estimate, these are higher with respect to the average grant award, and therefore, they project higher savings estimates. We have been very carefully reviewing our numbers again, and we feel very confident that we are accurate in that regard.

Mr. SIMON. The first question, I am not sure with all due respect, Mr. Secretary, was answered, and that is, if we should approve indexing, will indexing be knocked out again in future years?

What is the plan there?

Secretary BELL. Mr. Chairman, I am sorry I missed that point. There is no indexing restriction in 1982.

Mr. SIMON. I understand there is no restriction in the regulation.

My question is, will the department next year come back with the same thing, and are we pushing families down more and more year after year after year?

Is this a one-time shot, or is this something that we can anticipate is going to be repeated?

Secretary BELL. Mr. Moore.

Mr. MOORE. For 1982 and beyond, Mr. Chairman, we would rely on the adjustment of the overall tax rates on discretionary income to give effect to the administration's budgets for 1982, 1983 and beyond.

In that context, we would not include indexing in 1982.

In other words, this is the last time that you would see our proposal to withdraw it.

Secretary BELL. The reason we came up with the indexing this time is that it is something we can handle by regulation, and we are concerned as you are with the time that is going to be taken in this regard. We were looking at ways that we could contain the costs without requiring the lengthy matter of passing the statute. We need to distinguish between getting the students' eligibility reports out, on the one hand, and getting the final award out which comes later on. This would make it possible—the approval of our regulation—for us to proceed to process right away. After you took action on the proposed statutory changes, then we would make those awards accordingly.

If we had to go to ratable reduction, then we would have to do that.

We would like very much to see the limitation on cost of education approved, and the reason for that, of course, it protects the low-income student and gives the larger award to the needy.

Mr. SIMON. I would add one other comment before I turn to my colleagues, and that is the real question here, after meeting with my colleagues in the higher education community, is not one of dollars, it is one of policy. There is a willingness on the part of the higher education community to accept the dollar figure, but an unwillingness to accept the procedure. I hope something can be worked out, so that we can move it then as rapidly as possible without unduly depressing, without having some wholly unrealistic statistics for family income that are already very, very low compared to what the Bureau of Labor Statistics says. I might add, while I favor a change in the CPI because of its exaggeration on the housing components, we are talking of a procedure on the CPI, where it is calendar year 1980 versus calendar year 1979, so that by the time this is put into effect 9 months later, there is already significant slowed down effects there.

Secretary BELL. I would emphasize, as you well know, we also have to consider the Senate side and what is going to happen there. In my conversations, there is a great deal of concern about the size

of these awards, because the maximum award obviously goes to the lowest income student. We would hope that the committee and the higher education community would support us in our concern for the low-income student, so the greater dollars can go where the greater need is.

I am not sure there is an awareness of this or concern about it with some of the higher education community.

This is part of our commitment. The Administration emphasized that we want to protect the truly needy, and we would hate to lose the capability of doing that.

Mr. SIMON. If the Chair could just comment, I think, to use the overworked phrase, "truly needy," I think there is a feeling on the part of the Chair and the higher education community, that that should be done.

We are in agreement with your objective. We question whether this particular procedure achieves that objective.

Secretary BELL. Well, if we have a lack of agreement on numbers, I think we can get together, Mr. Chairman, and work them out.

Mr. SIMON. My hope is that we can.

Secretary BELL. If we are in error on that, and we are confident we are not, but if we are, we could get together on that.

If our objective is the same in that regard, then I don't think we are so far apart.

Mr. SIMON. Mr. Coleman.

Mr. COLEMAN. Thank you, Mr. Chairman, and I want to thank the Secretary for being so cooperative with us on rather short notice.

I suppose it is ironic in an educational issue like this that we have almost a textbook example of the executive and legislative branches coming to a head-on collision with a very practical problem of time staring both of us in the face.

We talked about alternatives to getting us out of this bind this morning as soon as possible with both branches wanting that as an end result.

One was to pass a resolution of disapproval of the March 13th regulations which would then be turned down by the full House.

Another one would be to send a letter, perhaps from all members of this committee, saying that they have no intention of introducing such a resolution.

Mr. Secretary, there is a third alternative that we recognize within the realm of politics, in trying to get compromises and accord, that we could, in effect, effectuate an understanding between the chairman of the full committee, Chairman Simon, and also a party to that would have to be Chairman Stafford on the Senate side, more or less that this is not going to happen as far as a resolution of disapproval going forward?

Is that a possibility?

Secretary BELL. It may be.

My concern there, Mr. Coleman, is that, No. 1, we attain the dollar savings that we are talking about; namely, \$632 million, and that we do that in such a way to protect the most needy students, I know you get tired of hearing that, and you call it an overworked phrase, but we do have concern about it.

There have been public commitments. The President has said that in his program, he wants to protect the truly needy, so we want to live by our words in that regard.

Now, if we could do that, I think there might be a way to get together.

The thing that I would emphasize is that if the committee would act on the regulations, we believe for approval, but regardless of what the action is, we need action, and if your intent is to disapprove and we can't dissuade you from that, the sooner we get the action, the sooner we can begin to process. I would urge that, and we understand that it is easy to see things differently, and we will proceed with the process.

Mr. DINGELDEIN. Mr. Coleman, I just wanted to add one other point with regard to the elimination of the indexing.

As the Secretary said, it protects the truly needy, and in that case, that means all families with an income of around \$11,000 to \$12,000 and below. They would not be affected whatsoever by the failure to index the family-size living expenses in 1981.

Mr. COLEMAN. Mr. Secretary, what is the timeframe that we are dealing with, as far as when schools actually need this information, when students need the information, when you can get your computers revved up?

Secretary BELL. I think Mr. Moore ought to respond to that, since he handles this on a working basis.

Mr. MOORE. Well, Mr. Coleman, first of all, the system has been inoperative since the end of last month when normally it would have begun to spin out the student eligibility reports.

We estimate that at the moment, there are something in the neighborhood of 1 million to 4,400,000 applications in our data base, that is, applications for which processing can be done immediately.

Now, under our prime contract, we have a 6-week turnaround time, that is, 6-weeks from the time the student puts the application in the mail until the student eligibility report gets back to him.

At the same time, of course, rosters are generated out of the system which go to the institution of first choice indicating that the student might possibly enroll there with a basic grant in the fall.

To be more specific, institutions need to know during April and May, what students are eligible for grants, because the basic grant is the foundation of the student aid package, if you will, because in all of the lowest-cost schools, students also receive assistance under our campus-base programs, State awards, and so on.

The farther we go down to May without this in the hands of the institutions, the more difficult it becomes for them to organize their programs for the fall.

If we were to resume processing this week, we could have the document flow moving out through the post office and so on within a very few days.

With rosters going back to institutions with these EIs probably in the next week, the early part of April, it would take until probably August to absorb the backlog that is in the system.

I shouldn't say August. That was based on the earlier assumption that there would be no action for 45 days which takes us down to the first of May, but certainly we would require until probably June to absorb the backlog into the system, late June, and get the 6-week turnaround time back as an operating standard, but we are at the point today on the 23d of March where any delay beyond this time is going to work a very definite hardship on institutions, and, of course, cause all kinds of questions in the minds of students.

Secretary BELL. Mr. Coleman, the thing we really need is a congressional process for approval or disapproval which can be on the record and which can be final. If we do that, then we won't be issuing these student eligibility reports and then have to face a possible later change in them.

That would be, as you could well imagine, quite a disaster. I think your first two approaches that you mentioned would be best in that regard, and then we could move expeditiously.

We are willing to do that just as soon as we have a response.

Mr. COLEMAN. One last question, if I might.

Somebody at the witness table, if you could respond, it is my understanding then, if we do not do anything, and this time sequence is still being held up, you might have to respond with a rateable reduction. You have rejected this notion, because you say that it will hurt as the rate is being reduced, those people receiving the largest grants will get the largest reduction in their grant, and those people by definition under the terms of the law are those who are in the lower-income categories, is that correct?

Mr. DINGELDEIN. They won't get the largest reduction, but they would get a reduction. In other words, in the second step of that reduction process, the way we have interpreted the law, all awards would have to be reduced by the same percentage, so you would have a reduction in the maximum award going to the neediest student.

Secretary BELL. Of course, 10 percent of \$1,700 versus 10 percent of the lower number.

Mr. COLEMAN. Correct, thank you.

Mr. SIMON. Mr. Peyser.

Mr. PEYSER. Thank you, Mr. Chairman.

Mr. Secretary, we are certainly pleased to have you back here again. I am sorry it is dealing with these problems which hopefully we can resolve.

I think it is important, Mr. Chairman, that we do not find ourselves in a position the administration is trying to put the Congress in, the situation that we are responsible for delays in moving ahead with this program. This is the situation now, and the administration by the recommended regulation change is guilty really of stopping the machinery that has worked so effectively in handling these grants. I must say, Mr. Chairman, on this Saturday at 10 o'clock in the morning, I had called a meeting in Yonkers, N.Y., of any interested parents and students, and if you know what it is like to get students and parents out at 10 in the morning on Saturday, over 400 people showed up who really could not—mostly these were lower- and middle-income families—who could not understand why the administration was making this move, No. 1, against stu-

dents, and No. 2, of delaying this program where many of the people there were recipients of Pell grants in the past, and that leads to my first question, Mr. Chairman.

First of all, I am interested, Mr. Secretary, have you or your staff met with any parents or students who are recipients of these programs and had a chance to sit down and discuss rather than listening to formal testimony, has anybody on your staff met with groups of this nature?

Secretary BELL. There are groups coming to us all the time. I was at a meeting of State legislatures Saturday on another matter, and groups of students came to me after the meeting.

They came there for the purpose of talking to me and expressing their apprehensions, the very things that I think you are hearing, Mr. Peyser, up in New York. They were being expressed to me, and I would like to acknowledge to the committee so there won't be any confusion about this, I know that we could be processing right now, if we chose to follow the 1980 statute, and so if we are into who has the responsibility for stopping the processing, it is my responsibility for doing that.

Mr. PEYSER. Thank you.

Secretary BELL. We think it is for a very good reason.

Mr. PEYSER. Do you or your staff have any statistics that show the number of these programs that Pell grant recipients are under, in other words, not just the Pell grant that can let them go to school, but the guaranteed student loan, the work study, and their personal earnings on the outside?

Do you have statistics on that?

Secretary BELL. Jim?

Mr. MOORE. Yes, Mr. Peyser, we have some data on overlap between Pell grant recipients and the campus-based programs, that is, NDSL, work-study, and SEOG.

We do not have overlap information between Pell grants and GSL's, but one can infer a degree of overlap based on what we know about the campus-based programs.

Mr. PEYSER. The reason I asked the question is because, based on students that I have been talking to over the last 2 or 3 weeks, which runs into the hundreds, they point out to me that the only way they stay in college today is by balancing all these programs, and they are doing their utmost. I have talked to students who are holding two jobs while still going to college to make this work using all these programs. I wonder, and I would appreciate hearing from you, about the elimination of even \$100, as your office has provided me with the figures based on these Pell grants on these regulated changes saying, well, they can pick it up, it does not seem to hold with reality when you talk with these students to see what they are doing to make it today.

With the inflationary impact in these colleges coming next September, how do you suggest they make up that difference?

That is really what the problem is, and I don't like fighting you, as you know, but I am trying to understand what are these students and their families supposed to do?

Secretary BELL. We discussed that very question, not only in my office, but with our colleagues at OMB, and it was our concern for that question, Mr. Peyser, that led to a change in our original pro-

posals on how to reduce the expenditures in the student aid program.

An initial idea that was advanced by some of our colleagues in OMB, OMB staff, were to put some strict lids on here, and there, but we could see that forcing students out of private and public institutions and forcing them out of school altogether.

We wanted to get more flexibility. It is hard to get it and reduce the dollar amounts. You just are not honest if you don't say that there is that difficulty, but we do have the remaining need feature of our loan program. If a student, say, lost \$100 in the basic opportunity grant program, and they wouldn't lose that much under our proposal, if it were those who are extremely needy, because they qualify for the maximum and the maximum just doesn't follow that, if they were to lose \$100, that would show up in the remaining need. You could say they could borrow it and they owe it later on, but they would still be in school.

On top of that, we have a parent loan program that they can come on if they have to.

Mr. PEYSER. The parents' loans for many of these people is really an impossibility. That is a very valuable proposal, but for families who are earning at low levels with the parents' loan they have to start repaying in 60 days. It does not answer the question at all.

One other question I would like to ask, Mr. Secretary, I remember hearing President Reagan say at the early part of his administration, that his concept of Government was that the Cabinet would sit together and review the critical issues facing the country, and that all Cabinet members would have an input into this situation. I would wonder what your feelings are in bringing the issue up dealing with tobacco subsidy as a device that could augment and eliminate some of the problems that we are facing with students. I have here a quote from Senator Holland, a Democrat from South Carolina, estimating that \$200 million is what the Government pays annually into tobacco price supports, which, incidentally, he supports totally, but I wonder if it is an item of discussion for the Cabinet to consider the elimination of even half of that tobacco subsidy that is now going on and protect the students who are asked to absorb cuts of basically the same amount of money.

Is this an item that can be discussed in the Cabinet?

Secretary BELL. I have not been involved in that element very much, but I would say that the President reviewed with myself and with Mr. Stockman and some other members of the Cabinet present, the proposals that we had here.

He expressed some concerns that I hear you expressing, and I want to tell you that he was concerned that we not force students out of college and, he was supportive of the proposals that I have as contrasted with some proposals that would have been more difficult for students from low-income families. But I have not been specifically involved in a tradeoff of tobacco subsidies versus this.

Mr. PEYSER. The thing that really gets to be a problem for many of us is Mr. Stockman's name really comes up in everything that we end up discussing.

I think he is becoming a legend in his own mind at this point.

Secretary BELL. He is a very splendid public servant, Mr. Peyser. We appreciate working with him.

Mr. PEYSER. What I said, I would stay with.

My final question, Mr. Secretary, is would the administration honor at this time the rejection by the House of Representatives, in other words, if the House would not go along with this regulation proposal, would you go ahead and process these Pell grants under the law as it now exists?

Secretary BELL. I would need to confer with my colleagues at OMB and the White House on that.

I think we could get a very quick response to that question, and if the committee acts on that quickly, we will get back to you quickly.

Mr. PEYSER. I thank you.

Mr. SIMON. Mr. Erlenborn?

Mr. ERLBORN. Thank you, Mr. Chairman, Mr. Secretary, I think you can see that this is a very difficult process for members of the committee. I know it was for you.

You have made some decisions and you are trying to implement them, but the decisions you have made have put this committee in an almost unprecedented position of having to work within monetary limits of not just going on the assumption that we can spend as much of the taxpayers' money as we feel would be fun to spend.

That is something this committee, just over the years that I have served on it, has never faced up to.

We just went ahead with wish lists, and adopted whatever programs at whatever cost they might be without a worry about the future.

The future is now, and we are facing limitations.

As far as the timing of what you are doing and based on what the former administration did, I just noted that the family contribution schedule regulation issued by the last administration, had the date January 19, which just threw up a red flag in my mind.

I am more familiar with the Department of Labor and the burning of the midnight oil in the Department of Labor in the former administration to have regulations adopted prior to the 20th of January, regulations that had been highly controversial, and around for months or years; and finally, were resolved before Ray Marshall and company left the Labor Department.

Is there in this case, I don't know, but is there in this case with the Department of Education and the family contribution schedule any significance, the fact that that regulation was issued on the 19th of January, the day before the Inauguration?

Secretary BELL. I did not attach that significance to it. I had met with my predecessor and discussed a number of issues prior to the 19th, and so I was surprised, Mr. Erlenborn, that the regulation was brought forward, because, of course, that was their last day. But it was their right to do that.

In our program, we felt we had to come forward immediately to get these dollar cost savings in.

Mr. ERLBORN. Was there any—

Secretary BELL. Mr. Moore would like to respond since he was there at that time.

Mr. ERLBORN. Was there any reason under the law that this was done on the 19th, rather than the 21st?

Mr. MOORE. No, sir. Mr. Erlenborn, it was just the luck of the draw. This family contribution schedule is required by law to come up here as of the first of October for approval or rejection by the Congress.

We so submitted it.

There was no disapproval action at all by the Congress in November and December. We put it into the publications stream, along with an, almost a Harvard 5-foot bookshelf with regulations stemming from the 1980 amendments, and the date of January 19 is just happenstance.

It was being cleared out with a lot of other regulatory issuances right at the end of the last administration.

Mr. ERLNBORN. I thank you for that answer. I am certain that it is accurate.

It just was a date that seems to be a very familiar date with many timebombs and boobytraps that were left in other parts of the Government just before the last administration left.

Thank you, Mr. Chairman.

Mr. SIMON. Mr. Weiss.

Mr. WEISS. Thank you, Mr. Chairman.

At the outset, let me indicate to you, Mr. Secretary, that I have had the same experience as Mr. Peyser, as far as the consternation, anxiety, if you will, of students.

Indeed, yesterday afternoon, I had the occasion to be at a small Catholic college in my district. Mr. Peyser and I have adjacent districts, and we share people who go to that college in our districts, and these are people who come from a low- middle-income family setting for the most part with a number of students from each family attending college at the same time.

So it is hard to really understand how the concept of the truly needy is being applied by the administration in this instance. I suppose you could justify it, take the position as Mr. Stockman did yesterday, that nobody is entitled to anything.

There are no rights to anything, and that you could then say the right to a higher education is not something that the Government ought to be involved in; and if somebody can't go to college, that is tough.

The truly needy, they can still survive without going to college. Is that the kind of definition that the department is using these days?

Secretary BELL. No, we are concerned that low-income students have access to college, and the complexities of the changes reflect that concern. I would have to say that the President has expressed that concern in discussions on this, and made the decisions that he made on the kind of proposals we have before you, because he felt that it was the best way to accomplish the savings in this particular program of \$636 million and still do the maximum good that we could for students.

I don't want to say that that is painless, because we know students would get more money under the other program than they will under this one. But we do not think that the cuts are so heavy and so onerous that we are going to be forcing those students out of school, and we want to protect them, because they are the very ones that will drop out. They are the very ones that were at the

beginning of this program sometime ago; they are the reason we have the program.

Mr. DINGELDEIN. Mr. Weiss, I would only add, as the Secretary indicated earlier, we are not cutting back student aid, if you compare the 1981 budget with 1980.

Mr. WEISS. There is no inflation, right, but this very index that we are talking about is predicated on inflation?

Mr. DINGELDEIN. The overall student aid budget is going up by \$400 million, approximately 10 percent, despite the reductions that the administration is seeking.

If those reductions are not achieved, the budget will go up much, much more, by over \$1 billion in 1981. So we are only talking about how much the budget is going to go up, not whether it is going to go up.

Mr. WEISS. Have you factored into that, or could you give us the percentage increase in tuition costs over the course of this past year?

Mr. DINGELDEIN. In some cases, as with the family contribution schedule, we are eliminating the indexing, but there are other things that are recognizing increased costs, and we are providing additional funds.

For example, in 1982, we are adding another \$100 million to the National Direct Student Loan program, so this is by no means a low budget.

Secretary BELL. The reason we proposed elimination of the indexing which is in the regulations before you, and I would appeal to you to approve that regulation, the reason we wanted to do that is, it does not touch the student who makes less than \$12,000 at all.

It touches the others further up in that regard. It protects them in that regard.

Mr. DINGELDEIN. Further, I would add the reduction that would occur as a result of the elimination of the indexing would proportionately hit the students from higher income families by a larger percentage, so that it also in that respect, protects the lower income students.

Mr. WEISS. Again, I find it a little bit difficult to follow the last statement that you make, Mr. Secretary.

Apparently on the basis of the figures that your office has submitted to us, the indication that a family income in the \$10,000 range would, in fact, be subjected to a \$100 reduction.

Now, is that an incorrect submission by your office?

Secretary BELL. We were talking about the impact of the indexing itself.

Now, the overimpact of students of various income ranges, I think Mr. Moore is best qualified to talk to that.

Mr. WEISS. Just so that we focus in, is there or is there not a reduction if, in fact, indexing is eliminated, of \$100 to the \$10,000 a year family?

Secretary BELL. Mr. Moore.

Mr. MOORE. The indexing affects the family size offset which in turn is the figure used to protect income from taxation.

Now, what we had earlier proposed was to increase the amount of the family size offset by 12.5 percent.

Mr. WEISS. Would you please give us a yes or no answer for the record? The figures your office gave us is for a family of four, with a family income of \$10,000, without indexing, the Pell grant amount would be \$1,526; with indexing, \$1,626.

Now, is there a \$100 difference or not?

Mr. MOORE. If the family is above the offset, there will be a \$100 difference, that's right.

Secretary BELL. But if they are below the offset, there will not be.

Mr. DINGELDEIN. Mr. Weiss, we don't believe it is that low. It is not at \$10,000, but closer to \$11,000, and, of course, it depends on whether we are talking about 1981 or 1982, because it does change in the 2 years, but \$10,000 is a little low for the cutoff point.

Mr. WEISS. Again, I would like to have somebody in your office really go over the numbers to make sure that the numbers that you submitted to us are, in fact, accurate. It does not help us very much if we look at a set of numbers that you submit to us, and take that out publicly, only to have you say, yes, but you have not considered these other things?

Mr. DINGELDEIN. Well, Mr. Weiss, the Secretary did submit with his testimony last week or 2 weeks ago, a set of illustrations and examples of precisely how these amounts were calculated.

Mr. WEISS. All I am suggesting is, if that is so, if there are exceptions in the qualifications, that we be cautious about making blanket statements about family income levels which will or will not be affected by it.

Again, there are likely to be some misconstruing of what the facts really are.

Let me go to the process, if I may, Mr. Chairman, and by way of preface to the question that I want to ask, one of the concerns that the Congress always has, and this is not due to this administration, or your Department at this time, is whether there is an adherence to the legislative branch, to the legislative processes that are set out, or whether, in fact, the administration, and we have had the experience with the prior administration as well, whether the administration has decided to govern not by law, but by executive fiat. Whether, in fact, the executive branch has decided to take the prerogatives of the legislative branch onto itself, and if you want to be unkind, in essence become an outlaw as far as the statutes are concerned?

Now, I have that concern, and I am going to cite for a premise for my question, and correct me if I am wrong, as I understand the law, the Secretary of Education must promulgate regulations for the family contribution schedule no later than July 1 for grants which are to be made in the succeeding calendar year.

The law contains no provision permitting amendments to the regulations so submitted.

The law also does not provide any procedure for amending regulations which have been promptly submitted, and which have gone into effect in due course. Therefore, I would like to know what authority you have under the law to withdraw the family contribution regulations which were promptly submitted last year, and which went into effect last July 1.

I would like to know how that is affected by the January 19 regulation. My understanding is, that is simply a restatement, a resubmission of the July 1 regulation.

It seems to me that the only legal course of action you could have taken would be to ask for rescission of funds for the Pell grant program and follow the ratable reduction provisions in the law.

Instead, you followed a course of action which seems invalid.

I would like your comments on that.

Secretary BELL. In discussion with my staff before we came to appear before you this morning, we discussed those very points. I asked Mr. Sky, who is our counsel here, to be at the witness table so we could talk to these points.

I want to emphasize to all of the committee that I feel a deep responsibility to uphold and live by the law, and I said to my staff, I don't want any torturing of the law. I want an explanation about the authority that I have, the authority that is in the law that you have given me as the Secretary, and I want to live with that and use all the authority that you have given me to carry out the objectives that I believe in. But I don't want any torturing of the law in that regard. I hope I would never appear before this committee and be guilty of that.

Now, counsel advised me that what I was doing, I could do lawfully and without any stretching and twisting of the statute, and maybe, Mr. Sky, you could speak specifically to the question Mr. Weiss raised, if you would, please.

Mr. SKY. Well, Mr. Weiss, we followed the proper procedures for rulemaking in this case.

We issued a notice in the Federal Register amending the student family contribution schedule, and the provisions in the governing statute, section 431 of this general education provision, permit us by regulation to amend a prior regulation.

There is nothing that we see in the statutory law that precludes us from revising by proper amendment in the Federal Register a regulation which has been published.

Mr. WEISS. Which has gone into effect?

Mr. SKY. This regulation did not go into effect. The regulation that you are speaking of was published on January 19, a regulation was published in the Federal Register; but it has not gone into effect.

It was postponed pursuant to a memorandum of the President which directed agencies to postpone regulations which had not gone into effect.

Mr. WEISS. Tell me what the basis is. I would like to do it piece-by-piece. Tell me what the authority is for the President to interject himself into that process and issue a moratorium?

Mr. SKY. I believe the President has full authority to do that. In issuing his memorandum, he was guided by the Department of Justice, which provided advice with respect to that.

Mr. WEISS. Would you please ask the Department of Justice, for our records, to give us the citation for the authority of the President to do that?

Mr. SKY. We would be happy to supply it for the record.

Mr. WEISS. You don't have it at this point?

Mr. SKY. We would be happy to supply it for the record.

Mr. WEISS. Have you seen that authority or asked Justice Department to give you the text of the statute that occurs?

Mr. SKY. I understand the Department of Justice fully advised the Office of Management and Budget with respect to that.

I have not seen the particular memorandum.

I understand they have advised with respect to that, and we would be happy to supply it for the record, material from the Department of Justice.

Secretary BELL. This was discussed extensively in the White House; and not being an attorney, I did not understand the legal technicalities, but I know it was reviewed extensively at the time the Attorney General advised the President on this matter.

Mr. WEISS. Again, if I may just follow this up, because I do sincerely appreciate the difficult position that the Secretary is in in this kind of situation, and I understand and accept his determination to in fact, adhere to and abide by the law.

Was it you or your office on the basis of your speculation as to the validity of the Justice Department's advice to advise the Secretary that, in fact, it was appropriate and legal for him to issue this new amended regulation?

Mr. SKY. We advised that it was legal to issue the amended regulation in accordance with the General Education Provisions Act.

Mr. WEISS. Which were based on the President's intervention?

Mr. SKY. We were following the directive of the President with respect to postponing this and a number of other regulations, and we believe, in light of the Department of Justice advice, that there was a fully legal basis for doing that.

Mr. WEISS. Again, as an attorney, I would suggest that if you gave that kind of secondhand advice to a client, you might have cause to regret it.

This is, of course, in the private sector.

Please go through with me what the requirements of section 431 are as to how, in fact, new regulations, or amended or revised regulations, are being imposed.

Mr. SKY. A regulation under section 431, when a proposed regulation is issued, it is issued in accordance with the provisions of the Administrative Procedure Act, title 5 U.S.C., section 553, which provides for notice and comment on rulemaking.

However, under 5 U.S.C., section 553, there is provision made for exceptions under certain circumstances where the agency finds good cause that it is impracticable.

Mr. WEISS. Before you get to the exception, spell out for me what the regular requirements are?

Mr. SKY. The regular requirements are publication in the Federal Register, and this is the normal procedure of a proposed rule.

Mr. WEISS. Right. That was not done in this instance?

Mr. SKY. That was not done.

Mr. WEISS. What was done, the final regulation was published?

Mr. SKY. That's right.

Mr. WEISS. Unless you have a valid ground for the exception, in fact, this final regulation publication would be valid, is that right?

Mr. SKY. We believe we have a valid ground for exception.

Mr. WEISS. Were it not for that, it would be invalid?

Mr. SKY. We believe we have the grounds for exception.

Mr. WEISS. Explain each section as to why and how the exception comes into play?

Mr. SKY. We applied the exceptions in section 431 and section 553, because we believe there had been public comment with respect to this rule in the August 1, 1980, publication, and we also—

Mr. WEISS. Wait, wait. You are saying because there had been public comment on a totally different rule which you are now revising and amending, that that fulfilled the requirement of the statute?

Mr. SKY. There was an opportunity to comment with respect to the total family contribution schedule, and we received comments with respect to it.

Mr. WEISS. If people were satisfied with the August publication, but would have been dissatisfied with the March publication, how would they have known in August what you were going to do in March, since the new administration had not come in?

Mr. SKY. We believe, also, an additional reason for the waiver of proposed rulemaking is the emergency situation; but the schedules were published and, there was an opportunity to focus on the content of the schedule, and indeed, we got comments with respect to the earlier publication.

Mr. WEISS. The August one?

Mr. SKY. There was one cited in the March revision.

Secretary BELL. I am also told, Mr. Weiss, that that is not without precedent, that it has been happening since the basic opportunity grant started, that there have been these kinds of changes, and this type of procedure without going back to the notice of rulemaking. My staff advised me that there has been considerable precedent for this, and that this committee has not objected to this in the past. We were also looking at that precedent in that regard.

Mr. WEISS. Again, could we get the second reason why you felt you were within your rights in applying the exception?

Mr. SKY. Under 5 U.S.C., section 553, where time constraints are applicable, we believe that that is a justification for invoking the exceptions to section 553, and there were time constraints applicable here.

Mr. WEISS. Tell me one.

Mr. SKY. If we did not make this change, there would not be sufficient time to implement the program for this current year.

There would be delay in implementation of the program.

Mr. WEISS. The program was already in effect, and has been for some years. The rules have been published, the indexing rule had been adopted.

Mr. SKY. If we desire to implement the changes here, there would not be sufficient time if we had gone through the entire proposed rulemaking process.

Mr. WEISS. Any other basis?

Mr. SKY. Those were the two basis.

Mr. WEISS. Now, isn't it a fact the law requires if you do apply the exception, that you have to give this committee a 10-day advance notice that you are going to do that?

Mr. SKY. No, we do not read the law that way.

Mr. WEISS. Doesn't 431(b) do that?

Mr. SKY. Section 431(b) provides for notice to the committee when there is a question of invoking the provision which deals with the 30-day delay in the effective date of the final regulation.

We do not read the provision that you are referring to as applicable to a case where the Department is invoking the exceptions to section 553.

The practice of the Department and its predecessors in the past has been to invoke the exceptions to 553 on numerous occasions since 1976 and use the procedures of section 553.

We have not gone through the procedure of providing the notice which is provided for in section 431(b)(2).

That does not apply to the proposed rulemaking process, but to the provision of the statute which is section 431(b)(1), relating to a delay in the effective date of a final regulation.

Mr. WEISS. Didn't the President's order, in fact, do exactly that, delay implementation of a regulation which has been duly proposed?

Mr. SKY. The regulation in question did. The particular regulation published on March 13 is delayed for a period of more than 30 days, pursuant to section 431(b).

Mr. WEISS. Oh, I see. You are saying over 30 days, the waiver requirement, the 10-day notice does not apply?

Mr. SKY. We were not seeking to waive the delayed effective date provision in section 431(b)(1).

Mr. WEISS. Mr. Secretary, again, giving full weight and credit to the sincerity of your position, I would suggest that perhaps you might want to review as to whether, in fact, the Department is not looking for loophole justification for what, in fact, is improper, and as I say, a kind of dubiously invalid procedure.

The question is beyond the use of legislative powers.

Once we start going down this road, when does anyone have a sense of knowing when a rule or regulation is final?

What is to stop another notification from the President or the Department, sorry, we changed our minds, we are going to give you a new set of regulations. That belies chaos.

Secretary BELL. If we can, indulging in an extra-legal practice, it has precedent, and we don't concede that we are, at least counsel has told me that we are not without precedent in previous actions, as it was pointed out since 1976.

With respect to the President's authority to issue the overall suspension of regulations, I would suggest that that is a matter for the Justice Department to defend.

You may or may not want to call them before the committee, but obviously, when I get an order from the President, I comply with that, and I assume that his counsel gives him advice.

I would say that I have worked, and in my previous position, worked with Mr. Sky. I know him to be a very competent lawyer, and I feel we have very competent attorneys very knowledgeable about the laws that this Congress has passed that I have to administer. I try to rely upon the advice of counsel in that regard, which, I think, is a prudent thing to do, certainly not to rely on my own or substitute my judgment for theirs.

In no instance since I have been there have I asked counsel to stretch a point in any direction to give me loopholes and latitude to do what I want to do.

I know that when I start doing that, I lose credibility with this committee, and you have enough problems to worry about without worrying about whether or not you have a slippery Secretary who is going to find every place he can to dodge and weave and slide around.

And so I have been very careful about that, and I want to be very forthright about it. When I disagree with you, I want to say so in earnestness and express my views on it, but I do not want to be a law stretcher or torturer in any way, because we need to live by the law. I respect the law and I took an oath of office to uphold that, and I will do that as best as I can understand and get advice from competent lawyers.

If I find that my legal staff gives me erroneous advice, then that is the time I ought to start asking myself if I should start changing lawyers as you would do.

I want to emphasize, Mr. Chairman, I never want to come before this committee and be a devious loophole seeker, and if we err, it is going to be on my part an honest error, and one, when I am corrected, which will not occur again.

Mr. WEISS. Mr. Secretary, I appreciate that, but I also take note of the fact you said quite rightly, when you receive an order from the President of the United States, you have to follow that; and I suggest to you that sometimes when the policymaker from the Chief Executive makes a determination, he may do that not on the basis of his knowledge or understanding of the legalities involved. It seems to me that your staff owes a special obligation to you to make sure that the policy which the President has enunciated to be implemented is within the bounds of law. My question in this instance is that I don't think that that has been done, and I think that creates a great many potential problems for all of us.

Thank you, Mr. Chairman.

Mr. SIMON. Mr. Secretary, just a few concluding remarks, and we appreciate your being here on short notice, as has been mentioned before.

First of all, we want to welcome the Under Secretary-designate. He is not an unfamiliar face in this room, and all of us on this subcommittee have great respect for him.

Second, there is disagreement with Mr. Dingeldein on what the law calls for in the reductions, and here, I think, our staff and your staff perhaps can get together.

I understand that some computer runs have been made of various options by your office. If it is possible for this subcommittee to have access to those, that would be appreciated.

Secretary BELL. We will provide them, Mr. Chairman. If I could summarize just a minute where I think we are, if I may.

Mr. SIMON. Certainly.

Secretary BELL. If I am hearing correctly, at least on the part of the chairman's view, the contest is not so heavily focused upon the intent of saving the \$636 million.

Now, there may be varied views on the committee on that. I am not implying that you have come to agreement on that, but the

point is, if you intend to save \$600 million, then I guess the question remaining is—we have said how we propose to do that without significantly cutting into the maximum award, and that is what we want to steer away from.

We think the reduction formula is very onerous in that regard, and that is why we are here before you. If you intend to save the \$636 million, is there another way that the committee feels that can be done without cutting the maximum award?

That is our prime concern. There are other principles that we would like to uphold, like the \$750 contribution and so on, but the big concern is to get the grants out to the students and stay within the budget if we can in that regard. I raise that question, Mr. Chairman, as one that, if we could address ourselves to further, we will want to be responsive.

Mr. SIMON. Let me, in response, Mr. Secretary, say that we share concerns here, and let me add one other factor—that I have been going over a list of colleges and universities. The smallest tuition hike I have seen for this next fall is 13 percent.

There may be some somewhere in the country that are less than that.

Secretary BELL. There are a few less than that, but my home State went up 12, but you are hitting close to where it is.

Mr. SIMON. We are putting the squeeze on in two different ways.

I think you are correct in talking about the dollar figure. We are not in disagreement on that.

I think the higher education community, after meeting with them, they are reluctantly going along and saying we have to save that money.

We are in agreement that we have to protect those most in need. We are in disagreement as to how we can do that.

We are in agreement, third, that we have to proceed with haste to get this thing resolved.

In connection with that, what I will do later today will be to send a notice to the members of the subcommittee for a hearing, for discussion next week, of where we go on this, so that we can act next week.

Now, my hope is, Mr. Secretary, that prior to next week, in line with our telephone discussion this morning, that there can be some discussions between us so that we can get this thing resolved.

It seems to me that since we are so close to agreement on the basic principles—that we ought to be able to resolve this thing.

Secretary BELL. As soon as you could signal your intent about our regulations, we could then proceed with processing the student eligibility reports, and that part could start moving, and if that didn't have to take until a week after next, we would surely save some working time there.

Mr. SIMON. It is the disposition of this subcommittee to act rapidly.

At the present time it probably would be the disposition, and I am speaking without having discussed this in detail with the members of the subcommittee. I think the present disposition of the subcommittee would be to reject the proposed regulation. But I think this is why negotiation between now and next Monday is extremely

important, and if it is possible to resolve this thing so that we can all agree, obviously everyone is ahead.

Secretary BELL. Yes.

Mr. SIMON. Mr. Secretary, we thank you and your staff for being here.

Mr. SIMON. Our next two witnesses, we will ask them to appear at the same time.

Dallas Martin, executive director, National Association of Student Financial Aid Administrators; Charles Saunders, vice president for governmental relations for the American Council on Education.

Mr. SIMON. I understand neither of you has a prepared statement, and you have heard the discussion with the Secretary and his staff. This subcommittee is very anxious to hear from both of you.

STATEMENT OF CHARLES SAUNDERS, DIRECTOR, GOVERNMENTAL RELATIONS, AMERICAN COUNCIL ON EDUCATION

Mr. SAUNDERS. Thank you very much. My name is Charles Saunders of the American Council on Education.

We certainly appreciate this opportunity to comment on the testimony of the Secretary and his staff.

Do I understand, Mr. Chairman, that the telegram sent last week by 12 higher education associations, their presidents and elected heads and executive heads, has already been inserted in the record?

Mr. SIMON. That is correct.

Mr. SAUNDERS. If I could proceed on that assumption, I would like to express our deep concern that the administration is refusing to resume processing of Pell grant applications, and in effect holding some 5 million needy students hostage to its efforts to force congressional approval of its proposed cutbacks in the program.

We are concerned for the damage this will do to students and institutions all over the country at this critical point in the processing system.

It will result in confusion and frustration on every campus, as students realize they will be unable to make final plans for financing their college for the next fall, and we must assume that many of them will be unable to go on to college at all if aid awards are not going to be known until late summer or fall as now appears perfectly possible.

College officials on their part are in a quandary at this point on this critical point as to what to tell their students.

I spoke to the president of a small private college last week who is very concerned. He said, "I have to tell my students something. If I tell them that their aid is going to be reduced, I am concerned that many of them will go to another institution which can offer them more institutional aid than we can, or go to a lower priced institution." That is the dilemma these people are in at this point.

We are also concerned for the damage the administration's unprecedented action is likely to do to the integrity of the Pell grant program by tampering with the complex details of the family contribution schedule after its legal review by the Congress as pro-

vided in law and its publication as final, in order to reduce program costs, when the law already provides an orderly mechanism for controlling costs without producing chaos in the program.

Now, we are concerned because the higher education community has not sought to exempt itself from the administration's government-wide budget cuts. We have recognized that higher education must take its share, and we have sought to work with the administration to reduce program costs, and for that purpose, Mr. Chairman, last Wednesday there was a meeting in Washington of the heads of the major institution-based associations, the dozen associations listed in the telegram. We discussed this program at great length and communicated our findings the next day to the administration, and I would like to stress that we are conceding the need to reduce program costs up to the level proposed by the administration.

We are not asking for the \$1,800 maximum Pell grant intended by Congress for this year in the continuing resolution, nor for that matter are we asking for the \$1,900 maximum authorized for this year. We are ready to accept the administration's proposed \$1,750 maximum, even though the burden of this step must fall most heavily on the neediest students which Secretary Bell has told you he is most concerned about saving, because simply to retain the present level of the award maximum represents in effect a 30-percent reduction in the value of the award for the neediest student, the one who is eligible for the \$1,800 maximum which was paid at that level in academic years 1979 and 1980.

By the third year at this level, that neediest student by failing to increase the maximum will have seen an erosion of the value of that award by 30 percent, so failure to raise the maximum in itself is most regressive to the neediest students, because a 10-percent reduction in the purchasing power in a single year for a total-need student from a family, say, with a \$5,000 to \$8,000 family income represents a loss to that neediest student of \$175, while the same reduction means a loss of \$20 dollars to the student from a family with income of about \$24,000 receiving the minimum \$200 award.

Nevertheless, as I say, the higher education community is willing to concede that cost-saving step of retaining the \$1,750 maximum as a means of saving some \$200 million from the cost of the program, if the \$1,800 maximum were paid as assumed in the continuing resolution.

In the interest of reinstating the processing system immediately, we have also informed the administration that we are ready to accept its withdrawal of the January 21 cost-of-attendance regulations, and live 1 more year with the current unrealistic and artificially low room and board and student budget allowances, instead of the more realistic standards established by the 1980 amendments.

This will automatically understate all students' true cost of attendance from \$900 to \$2,500, and particularly discriminate against students living off campus; but it will enable the administration to save another \$400 million, a saving, I should emphasize, which is borne almost entirely or will be borne entirely by needy students at public institutions who will have to defer the increases Congress directed.

If Congress finds further reductions are necessary beyond this \$600 million that I have already outlined, additional cuts may be made by the ratable reduction schedule, and we would simply propose that if this is done, great care should be given to assure that the burden is borne equitably among Pell grant eligibles.

We understand that the runs done by the Department over the weekend, assuming the implementation of the existing cost-of-attendance regulations as proposed by the administration and the \$1,750 maximum, and then using a reduction schedule which starts at \$12,000-level family income, and progressively cuts eligibles up to the \$25,000 maximum, that that would bring the administration \$120 million of the \$636 million it is seeking. We can, we understand, from proposals made by the higher education community, with a modest reduction using the reduction schedule, make up the difference.

Having conceded this much, we must strongly oppose the administration's proposed revision of the Family Contribution Schedule, which is seeking to save another \$134 million for a number of reasons. One, failure to update family offset for food and shelter costs will reduce awards for all families above \$7,700, and will hit particularly hard those families in the near-poor level from \$7,700 to \$8,600 who would have benefited from that family-size offset.

It will eliminate some 150,000 eligibles and also make it more difficult for the program to catch up in the future. It will cost twice as much next year to get back on schedule as has been the case every year in the past. Not only that, any change in the approved family contribution schedule would force a further delay in the processing of awards. Although the Secretary has promised immediate action, the way we read the law it takes 45 days for the congressional approval process to run its course, and then all the applications have to be recomputed, and it would be well into summer before any awards were made.

I might say, Mr. Chairman, that we also strongly oppose the administration's proposed \$750 self-help requirement which they are requesting to save another \$100 million. We are aware of a departmental staff study which concluded that this proposal is grossly unfair and administratively unworkable. If anyone thinks this is a reaffirmation of the work ethic, I think they are mistaken.

This proposal would impose a self-help requirement only on a selective few: those lower middle-income students attending some 600 or so low-cost community colleges, black colleges, and State colleges. It would eliminate 75,000 of these students from eligibility for Pell grants and disrupt the processing system by requiring new hand calculations for each student at institutions under a cost of \$2,500, increasing the likelihood of error and the need for counseling, and require alterations and further delays in the data processing systems supporting the existing processing system.

Furthermore, it would destroy the concept of Pell grants as the foundation of all other aid, since it would require a calculation of all other aid before the Pell grant is awarded.

In summary, we are ready to concede if some \$600 million in program reductions is required, we are ready to indicate those areas where reductions can be made without stalling the system, and in ways which do not hurt the poorest, but burden students at all

income levels in order to get the processing system started immediately. We urge the committee to direct the administration to take this action.

We cannot accept the further delays that the additional changes to the family contribution schedule would make at this time.

Mr. SIMON. Thank you, Mr. Saunders.

Mr. SIMON. Mr. Martin.

STATEMENT OF DALLAS MARTIN, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS

Mr. MARTIN. Thank you, Mr. Chairman. I appreciate the opportunity to appear before you today.

I find myself, as Mr. Erlenborn said, in a difficult position. I regret that circumstances require us to be here today, and that it is necessary for us to comment upon this modification. I also find myself in a difficult position, because I have said before to this committee on a number of occasions, and tried to convince the Members of Congress of the need for the wise investment for the dollars we are putting into postsecondary education.

We are trying to recognize the realities and support the general concepts of the President and recognize perhaps it is necessary for all of us to tighten our belts a little bit. Therefore we are willing to, and I might add, reluctantly willing, to try to work with the administration in this year to save the amount of money that they have suggested. To that end we met with people from the Department and programing staff and some of the congressional staff last week, and discussed in detail our differences on the costs, in the hopes of trying to arrive at some kind of solution to show in the spirit of things that we could come up with the dollar savings that the administration has identified, and we have proven that.

I could not help but feel as I listened to some of the comments this morning, of the misinformation that came out about how this program works. I regret that much of that is on the record, and perhaps we will have an opportunity to correct that later on.

I would say, however, I do believe that the Secretary and his staff are sincere about trying to get to the problem, and I think they understand as we do the serious problems that are facing the whole delivery system if it is not resolved in a very short period of time.

It is a little unfair to assume and to suggest to this committee, if you simply go along with the new revised family contribution schedule which is issued, that they can immediately turn on the computers and resolve the problem. That only deals with one piece of the administration's proposal, and does not address the other, which is a legislative matter, and that is the imposition of a \$750 self-help expectation which is still subject to congressional review. If that is to be plugged into the system to be calculated by the machines rather than imposing that burden upon institutions, it is my assumption that would have to be done at the same time, and that will take additional delays over and above what was commented on here this morning.

We would suggest, as has been pointed out by Congressman Weiss, that there is a congressional process to go through, and that is exactly why the program is specified in the statute to suggest that there is a schedule submitted to the Congress for approval each year by July 1, and the Congress has until October of that year to either pass a resolution of disapproval, or else the proposal goes forward. It is on that assumption of assuring a timely period for the Department and their processors to get a system in, and for that reason in January of each year forms are mailed to students with assurance once those begin to arrive at the processing center, that they will be dealt with in an expeditious manner and reports will go back to students and State agencies.

The delay we have encountered is one that makes all of us very nervous about the decisions that students are going to be facing this fall.

It also seems to us to make the suggestion that the reason for the revision under the General Education Provisions Act under section 431 is at best dubious.

I noted that in the comments, and you made reference to that in your opening remarks, that there was an individual who had suggested whether or not the CPI was an adequate kind of basis for updating the family size offsets that are in the Pell grant program. I would like to ask, and perhaps you can get that clarified from the Department in terms of their exception, if that is the single comment that was contained that caused them to question that. I would like to know how many comments they received from other people in the community that did not question that. Why would people have questioned that when in fact it was assumed that index was going to be updated in terms of the reasonableness and in terms of trying to deal with real dollars with families.

Perhaps that is something we need to look at a little more, but I am not a lawyer and not the one to debate the matter.

We need to look at the proposals the administration suggested to understand what they are talking about.

Let me, if I may, comment briefly on each of those, and first of all on the automatic indexing.

The reason that we have such indexing in the Pell grant program is to try to look at families in terms of real dollars, and the impact that inflation has on goods and services, or their purchasing power of goods and services from year to year. Failure to do that obviously discriminates against families, and actually erodes their overall purchasing power, and you in effect get a regressive kind of means in the system from the lower income families to the higher income families if that is not addressed. Those families on the lower end are not impacted since they are limited by the amount of the award. On the other hand, it is certainly unfair for all of the people that are up above and also serviced under that program. The index in this particular program differs from many of the other social programs that the administration is concerned about because the way the formulas work under the Pell grant program. In fact if a family has a growth in income that exceeds the cost of inflation, that family actually will have their award reduced the following year, and there are many families participating in that

program where salaries do go up higher than the rate of inflation, and therefore the awards are reduced.

It is more important to understand that the indexing that we are doing is based on the growth of income from 1979 to 1980, a period that is 2 years behind the actual period in time in which these funds are going to be used by students to pay for their educational costs.

So if we followed the administration's proposal and defer such indexing for a year, we will now be faced with a 3-year gap from the time we assess the family's real ability in terms of when they will be paying for their educational costs. I would question whether or not we can expect the American people to buy that kind of realism.

I would also suggest, Mr. Chairman, that when we talk about the second part of the administration's proposal, which is to impose a self-help expectation on the Pell grant program, our association has always endorsed the concept of having students contribute to the cost of their education through term-time earnings, summer employment, and also through self-help, such as the college work-study program and loan programs. In fact students are doing that, and they are doing that to a great degree. I would be happy to provide some additional data to the committee. By the very nature of the Pell grant program you are either limited by the maximum grant that is approved in a given year, or by another factor that is referred to as not to exceed half the cost of attendance, so the very assumption of this program implies that there is imputed self-help and an additional burden to be borne by the family. You will find very, very few students under this program that are not assuming something far greater than the imposition of this \$750 self-help component advanced by the administration. You would find by the very mechanism that we award the campus-based programs, that it is assumed that a \$700 summer savings expectation is built in for every student who is a freshman, and at least \$900 for every upper-classman. Individual institutions have the option of putting in their own data, and many of them use data that is far higher than the minimal standards, so we certainly have a variety of ways of dealing with self-help.

It is erroneous to impose this concept in a program such as the Pell grant program, which by its very nature is using a set of family size offsets based upon the threshold levels developed under the Social Security Administration, that grossly underestimates the true cost that families must pay for their basic kinds of maintenance. By comparison, Mr. Chairman, look at the Bureau of Labor Statistics low standard budget, and you will find a difference between the family size offsets for a family of four proposed by the administration and the same figures that are used in uniform methodology, because using the Bureau's low standard there is over \$3,100 of difference in what is estimated to be the real cost of goods and services that that family must pay in order to provide basic necessities of food and shelter, transportation, and health care and clothing. So we already have a very artificial limit in this program in terms of how we are assessing the family's ability to pay, and it is not a true measurement of their discretionary income.

Second, the very program itself uses a set of cost-of-attendance standards since its inception in 1972 that are artificially low. For example, every student that participates in the program is limited to a maximum of \$400 for books and supplies, transportation, and personal and miscellaneous expenses. I would suggest to you that any two of these items would certainly outstrip that \$400. In addition, any student who is not residing in campus-approved or campus-owned housing is limited to a total amount of \$1,100 for room and board for a given year. I would again suggest to you that that discriminates against most students enrolled in community colleges since most of them do not have residential living units, any campus that has students living off campus, which many of them do, and certainly the older and married students who frequently out of necessity find it is necessary to live off campus. What you find in essence, Mr. Chairman, is the fact that if you look at the published cost of attendance in most college catalogs today, you will find that there is a range of anywhere from \$1,500 to \$2,000 additional real cost of attendance that the student must pay that are not taken into consideration in the restrictive cost-of-attendance standards that are currently imposed in the Pell grant program. Be that as it may, we have not argued with the administration on the concept. In fact, if you look at the statute, the Educational Amendments of 1980, we would respectfully submit that I think the administration has perhaps not read it clearly. Under section 482 which describes the need analysis and cost-of-attendance standards, it appears to me that it calls for those provisions in that new single need analysis going into effect for the fiscal year 1982 year, not fiscal year 1981, and that is what we are here to discuss today. It also seems to me if that is the case, then the question of the huge costs that we found it was necessary to save, that you can take out roughly another \$400 million of that for the cost-of-attendance standards that they assume would be liberalized. We are suggesting that you can stay with the \$1,750 maximum grant, that you can go ahead and use the cost-of-attendance standards now in place, and use the statutory reduction language or some variation of that and save the additional amount of money that is absolutely necessary to meet the President's target.

I also find it interesting that in this debate that the Secretary has consistently referred to the point that if we impose this hardship upon the students of \$750 or whatever, there are certainly other programs that they can make this up from, and I noted this morning that they were quick to point out, one of them was the NDSL program that they were going to increase in 1982. We are glad to hear that, since it was reduced to \$186 million this year. The ratchet effect of falling below that will trigger the language in the law that will cause great aberrations of distribution of those funds throughout the country this year, and will primarily affect your lowest-income students.

We also noted with some surprise that the Secretary alluded to the parent loan program as another way that families could help make up some of this loss. I have a release from the Department of Education that came out on January 29, and in this they list by States and territories estimated startup dates for the parent loan program. It is interesting to me as I ran through this, by quick

count, I find about 35 States have indicated that they either have no authority, that they are trying currently to get an opinion of whether or not they do have authority under the Attorney General, or that they require legislation. Even by their mildest estimated dates of when it might be available, there are 17 of these States across the country that have indicated they will not be in a position to make parent loans this academic year. I suggest, Mr. Chairman, where do the students go to get this kind of money? I find that the logic of what has been proposed here by the administration is simply a bucket with a lot of holes in it that does not seem to carry the water we need for these needy students.

We have also been involved in discussions with the Department about 1982, and we have suggested again we are willing to work with them in terms of some reasonable methods and ways we can deal with some of the issues that are involved in the need analysis and cost-of-attendance standards. We believe we can come very close in trying to work with them in terms of achieving the kinds of reductions that they have suggested, but I think it is essential, Mr. Chairman, that we make it very clear that the real delay in this program is being caused by the administration and their refusal to accept the law as it is written and to proceed.

I fear that the changes that we have suggested here will be ones that will suggest it is Congress who is suddenly deciding to protect people by causing a disruption of their rule. If that is the case, we encourage you to do so, Mr. Chairman, because it seems to me that it is very clear for this body to stand on the principle of going along with the realization of the impact of inflation on all American families and to reject a proposal requiring an additional \$750 self-help that would only be added on to the cost of students. With the possibility of still having to delay the payment schedule in any event, it seems to us it would be better to resolve this issue once and for all and sit back and avoid the kind of problem we got into last year where many of my colleges were forced to do regulations one way with delays, and some schools went through three changes. We would suggest it would be better to stand on this principle, resolve this in a fair and equitable manner, particularly when we are willing to concede to the administration and we are willing to work toward their targeted goal in this program. In reality we know we need approximately \$3.2 billion. The least they could do is cooperate on the manner in terms of trying to turn the system to benefit everyone.

Mr. Chairman, I can tell you from experience of being in this business for over 12 years that the very people that will be hurt the most with this delay and the dollars that will be saved will come out of those students who are enrolled in our institutions that are the least sophisticated, that come from the poorest families, that do not have the backup in terms of other kinds of means of the sophisticated. Those students will be primarily our disadvantaged, our minorities, and our underserved people in this country.

I would suggest that this would be a tragedy, and we hope you will be able to work toward a quick resolution with the Department. We pledge our support to whatever you can do.

Mr. SIMON. May I ask either of you, you heard Mr. Dingeldein's comment about rateable reduction. Do you agree with those comments? What is the status of what the law requires right now?

Mr. MARTIN. Let me comment, if I may. The first matter of disagreement that perhaps we have with the Department is its interpretation of how the ratable-reduction language works. It requires a first-step reduction of protecting all of those students who currently have eligibility indexes between zero and I think it is \$600. All of those students are protected in full value. The next step of students, \$601 to \$800, are reduced by 10 percent, and subsequent steps. After you have run that through on first-step ratable reduction, the law refers to a proportional reduction of the remaining difference. Our assumption would be if you still had not saved enough money, go back and run that again to once more protect those neediest students from zero to \$600 eligibility indices. The additional savings come out of reductions in the other awards out of other students. Granted, that takes more out of them, and you get a schism on the line that would protect all of these here, you get a much steeper slope, but that is how we have interpreted it, so we have some disagreement in how it would do that.

The second question is, if that is the primary concern, we have suggested and discussed with people from the Department that it might be possible to revise that schedule. If the first step will not save the amount of money that we need here, if we need a little bit more, you can simply slide that over by changing that first step indices from perhaps zero to \$600, move it back from zero to \$500 and include a few more. You could also slide a little more if you wanted to do it in smaller increments. It seems to me that is the point we should be discussing here. We could deal with that quickly, efficiently, and get on with the tasks and certainly achieve a disproportionate savings.

Mr. SIMON. These savings can be achieved without any statutory change?

Mr. MARTIN. If we modify the ratable reduction language, Mr. Chairman, I would suggest that could be done very easily probably at the time we are dealing with the supplemental. We could simply have point-of-order language, that is, the Appropriations Committee dealing with authorizing areas. If you advise them, we could do that quite easily and get on with the task.

Mr. SIMON. Mr. Coleman.

Mr. COLEMAN. If the \$134 million is not agreed to, and let us assume the \$100 million on self-help is not agreed to, then the \$234 million would be made up through the ratable reduction schedule?

Mr. MARTIN. That is correct.

Mr. COLEMAN. That is your basic position?

[Both nod in affirmative.]

Mr. COLEMAN. You do not interpret unfortunately as the Department interprets the ratable reduction schedule.

Their interpretation is different from your interpretation of who and where the \$234 million would come from?

Mr. MARTIN. They agree with us on the first-step ratable reductions that are specified. I believe their interpretation is you take the remaining amount and come up with a proportional percentage that applies to all students all the way through from zero all the

way to the maximum. We do not read it that way, but that is a matter of interpretation and perhaps could be clarified.

Mr. SAUNDERS. Our point is that the reduction schedule can be modified in appropriations language in a way to achieve the savings intended.

Mr. COLEMAN. What would be the time sequence on that?

Mr. SAUNDERS. This could be done in the language of the supplemental appropriation bill.

Mr. COLEMAN. I think the administration, well, I would just think that the administration position is somewhat hardened by the fact that the \$100 million self-help proposal has to be done by legislation, whereas they have total control over their legislation regarding the indexing. What you are really asking them is to give up a policy question which they have put forward and presented to the Congress, and I think there would be the reluctance.

The other one, it looks like it is a 1-year deal as it was told to us a while ago, that they were not coming back to freeze it next year, and so it is not a policy decision.

Mr. SAUNDERS. In a sense next year you would be 1 year behind. It would take additional funding to raise it, to catch up with the loss of a year, wouldn't it?

Mr. MARTIN. If I understand Mr. Moore, who commented on that remark when he said they were going to do that, he also explained the reason they would achieve their additional savings is because they plan to modify the assessment rate that is applied to the total family's income next year instead of the 10.5 percent we have this year. Next year under the law it is supposed to be 14 percent. It is my understanding the administration plans to recommend 20 percent on that, having the effect of negating that somewhat. If that was the only concern, quite frankly I would have felt better about the administration recommending some kind of increase on the taxation rate this year by going along with the indexing this year. That is not disruptive. If that would have been a proposal, it would have been a better suggestion than the ones that have been advanced.

Mr. COLEMAN. Well, I thank you. I think your attitude and spirit of compromise is a positive one, and I will certainly work with Chairman Simon and with all parties to try to get an understanding and an agreement so that the bottom-line figures are going to be the same. It is a matter of how we arrive at them, and I would suggest at least we have made some positive gain, Mr. Chairman. At least we are talking about the same figures. It is how we get there is the question. I will work with all the parties to try to accomplish that.

Thank you.

Mr. SIMON. Mr. Erdahl.

Mr. ERDAHL. I would identify myself with the remarks just made by Mr. Coleman. I hope we can work with the various committees and with the administration to try to achieve some compromises so we can see this particular generation of college students is not adversely affected by some proposal now before us. I regret I was at another committee meeting and could not be with you for this one, Mr. Chairman.

I have a question, and maybe this has been discussed before, about the \$750, whether we call it student effort or what not, I guess I have the hunch that a lot of young people are doing this already, and would that be such an added extra burden or criteria?

Mr. MARTIN. You are exactly correct. We find almost every student is assuming a major portion of their self-help. As I had indicated before, the other need analysis system that the vast majority of institutions use to allocate their other kinds of programs, campus-based, work study, so on, has built into it exactly such a self-help feature. The difference here is not that we disagree with the concept, we wholeheartedly endorse that.

The question is that the Pell grant program is a foundation. It is an establishment of an entitlement program that provides a basic kind of grant for preliminary access to any student, regardless of where he or she chooses to attend school. Once that is established, it restricts the total cost, but the award is either limited by the maximum or not to exceed one-half the cost of attendance, so it implies there is an additional 50 percent to be made up from other sources. What happens is that the other programs do that. It is where the self-help comes in. It is a misunderstanding on the part of some people, because the \$750 would only negatively impact upon a small number of students who are enrolled in very low-cost institutions, community colleges, and low-cost State colleges.

It is not a large number. The Department in their own analysis found that even with the imposition of that requirement, there will still be some inconsistencies in the award amounts. There is not total agreement by them and their staffs in terms of the merits of the argument.

Mr. ERDAHL. OK, thank you very much.

Thank you, Mr. Chairman.

Mr. SIMON. Thank you very much for being here.

We will have a meeting of the subcommittee a week from today, and in the meantime, we will see what we can work out informally with the administration.

Thank you very much.

Mr. MARTIN. Anything we can do to assist, we would be more than happy to.

[Whereupon, at 12:15 p.m., the subcommittee recessed, to reconvene March 30, 1981.]